

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ESTHER OLABOPO, *pro se*,

Plaintiff

-against-

1199 SEIU,

Defendant.
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SUMMARY ORDER

10-CV-1317 (DLI) (LB)

DORA L. IRIZARRY, United States District Judge:

Pro se plaintiff Esther Olabopo initiated this action against 1199 SEIU Homecare Employees Pension Fund (“Fund”) pursuant to the Employee Retirement Income Security Act (“ERISA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”). On March 29, 2011, the court: (1) granted Defendant’s motion for summary judgment as to Plaintiff’s ERISA claim; and (2) dismissed Plaintiff’s Title VII claims without prejudice, and granted plaintiff leave to file an amended complaint by April 28, 2011. (Docket Entry 25.) On April 11, 2011, plaintiff filed a letter with the court alleging that her “employers”: (1) miscalculated her hours of work, and have therefore delayed her retirement benefits; and (2) are responsible for the accrued interest on her college loans. (Docket Entry 26.)

Plaintiff’s allegations involving the calculation and vesting of her retirement benefits, which are governed by ERISA, have already been ruled on by this court. The court found that defendant’s benefit denial was properly determined, and plaintiff’s ERISA claims were denied. Regarding plaintiff’s “accrued interest” allegations, it appears that plaintiff is claiming this as damages resulting from the alleged Title VII violations. However, plaintiff has not properly stated a claim for a Title VII violation. As the court discussed in its previous Order, a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to

relief.” FED. R. CIV. P. 8(a)(2). Plaintiff’s letter requesting damages falls far short of this standard. Nevertheless, the previously set deadline of April 28, 2011 to file an amended complaint remains in effect. Plaintiff’s failure to file an amended complaint by that date will result in a dismissal of her Title VII claims *with prejudice*. For the convenience of *pro se* plaintiff, instructions on how to amend a complaint are attached. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith and, therefore, *in forma pauperis* status is denied for appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED

DATED: Brooklyn, New York
April 15, 2011

/s/
DORA L. IRIZARRY
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK
PRO SE OFFICE
U.S. COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

HOW TO AMEND YOUR COMPLAINT

If you have forgotten to state an important matter in your complaint, you discover something new after you filed your complaint, you want to add a defendant, or you want to insert the true name of a “John Doe” defendant, you may be able to file an amended complaint. An amended complaint does not just add to the first complaint. Once you file an amended complaint it entirely replaces your original complaint.

Amendments to a complaint are governed by Rule 15(a) of the Federal Rules of Civil Procedure. Rule 15(a) provides that:

A party may amend the party’s pleading **once** as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

This means that if the defendant has not yet filed an answer to your complaint, you can file one amended complaint without permission of the Court. If the defendant has filed a motion to dismiss but has not filed an answer, you are still entitled to file one amended complaint without permission. (You are only permitted to file one amended complaint before defendant files an answer; if you wish to file a second amended complaint before defendant files an answer, you must obtain defendant’s consent or you must obtain permission from the Court). However, if the defendant has already filed his answer to your complaint, you must get written consent from the defendant or permission of the Court before amending your complaint. If the defendant agrees in writing that you can file an amended complaint, you must ask the judge to write “So Ordered” on the written consent, indicating that the judge has approved the consent. If the defendant does not give you written consent, you can ask permission from the Court by filing a motion to amend the complaint and including a copy of the proposed amended complaint with your motion papers. Instructions for preparing a motion are attached and are available separately.

If you file an amended complaint. It **must** be captioned as an “**Amended Complaint.**”

FILING AND SERVING THE AMENDED COMPLAINT

SERVICE OF THE AMENDED COMPLAINT BEFORE THE ORIGINAL COMPLAINT HAS BEEN SERVED

If you decide to amend your complaint before defendant has been served with your original complaint and summons, you should serve the amended complaint on defendant and file the original amended complaint with the Pro Se Office as follows:

1. Make copies of your amended complaint.
2. Keep one copy for your own records.
3. File the original of your amended complaint with the Pro Se Office.
4. If you have not added new defendants in your amended complaint, use the summons that was originally issued by the Court.
5. Have a copy of the summons and a copy of the amended complaint served on each defendant by someone who is over eighteen and is not a party to the action. The original summons with the seal of the court embossed on it must be returned to the Court, so do not serve the original summons on any defendant.
6. Have the person who serves the summons and amended complaint on each defendant complete an affidavit or affirmation of service of process form.
7. Make a copy of the affidavit or affirmation of service of process and keep it for your own records.
8. Attach the original affidavit or affirmation of service to the original summons.
9. File the original summons and the affidavit or affirmation of service of process with the Pro Se Office.

SERVICE OF THE AMENDED COMPLAINT AFTER THE ORIGINAL COMPLAINT HAS BEEN SERVED ON ALL DEFENDANTS

If you decide to amend your complaint after the defendant has been properly served with your original complaint and summons (and you have not added any new defendants in your amended complaint), you should take the following steps:

1. Make copies of your amended complaint.

2. Keep one copy for your own records.
3. Send a copy of your amended complaint to the attorney for each defendant by ordinary first-class mail.
4. Complete an affidavit or affirmation of service of process form stating that the amended complaint was mailed to each defendant.
5. Make a copy of the affidavit or affirmation of service of process and keep it for your own records.
6. File the original amended complaint and your original affidavit or affirmation of service of process with the Pro Se Office.

**DELIVERY OF THE AMENDED COMPLAINT AFTER THE ORIGINAL
COMPLAINT HAS BEEN SERVED ON SOME DEFENDANTS
BUT NOT ON OTHERS**

If you decide to amend your complaint after some defendants have been served with your original complaint and summons but before other defendants have been served (or you have added new defendants in your amended complaint), you should take the following steps:

1. Make copies of your amended complaint.
2. Keep one copy for your own records.
3. Send a copy of your amended complaint by ordinary first-class mail to each defendant who has already been served.
4. Complete an affidavit or affirmation of service of process form stating that the amended complaint and summons was mailed to each defendant.
5. Make a copy of the affidavit or affirmation of service of process and keep it for your own records.
6. File the original amended complaint and original affidavit or affirmation of service of process with the Pro Se Office.
7. If you have not added new defendants in your amended complaint, you must serve the amended complaint on the defendant who has not yet been properly served. If you have added new defendants, the Court will issue an amended summons which must be served with the amended complaint. If you are adding defendants, you must bring this to the attention of the Pro Se Writ Clerk.

8. Have a copy of the amended summons and a copy of the amended complaint served pursuant to Rule 4 of the Federal Rules on any defendant who was not previously served with the original complaint.
9. Have the person who served the amended summons and the amended complaint to each of the new defendants complete an affidavit or affirmation of service of process form.
10. Make a copy of the affidavit or affirmation of service of process.
11. Attach the affidavit or affirmation of service of process to the amended summons.
12. File the original amended summons and the original affidavit or affirmation of service of process with the Pro Se Office.

If you have questions regarding any of the procedures listed above, please contact the Pro Se Office at 718-613-2665.

**Tara D. Hunter-Hicks
and
Ralph Vega, Jr.
Pro Se Writ Clerks**

**Attn: Pro Se Office
United States District Court
for the Eastern District of New
York
225 Cadman Plaza East
Brooklyn, NY 11201**

8:30AM - 5:00PM

(718) 613-2665